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No. 89-5867

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

SHIRLEY W. IRWIN,

Petitioner,

v.

VETERANS ADMINISTRATION, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Amicus curiae, the National Treasury Employees Union (NTEU), moves for leave to participate with petitioner in divided argument, pursuant to Supreme Court Rules 28.4 and 28.7. We have consulted with petitioner's counsel and are authorized to state that he supports this motion. Amicus and the petitioner propose to address separate issues and to divide the time allotted for oral argument equally between them. A grounds for its motion NTEU states as follows:

1. There are two issues raised in this case. The first is whether the 30-day time limit for filing suit against a federal agency under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16(c), is jurisdictional, or is, like its private-sector counterpart, in the nature of a statute of limitations that is subject to waiver and equitable tolling. The second issue is whether the 30-day period begins to run when the complainant or his attorney receive actual notice of the final administrative disposition of the complaint, or, as the court of appeals held, when notice is received by the attorney's office.

2. Amicus, NTEU, is a federal sector labor union that is the exclusive bargaining representative of approximately 140,000 federal employees nationwide. NTEU frequently represents employees in litigation before administrative and judicial tribunals, including cases arising under Title VII and other anti-discrimination provisions. Because the issues presented in this case are extremely important to federal employees who pursue employment discrimination complaints, and because we believe that the lower court's decision frustrates enforcement of the equal opportunity laws in the federal workplace, NTEU filed a brief, amicus curiae, on the side of petitioner, urging reversal.

3. NTEU's participation in the oral argument of this case would offer a valuable and unique perspective that would aid the Court's decisionmaking process. NTEU counsel are well-versed in Title VII law, and in the history of the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103, which

extended the protections of Title VII to federal employees. In addition, NTEU counsel are particularly familiar with the highly complex procedural rules which govern the Title VII complaint process in the federal sector, and are uniquely qualified to provide information about related questions of federal personnel law, which may be important to the Court's understanding of this case. Moreover, NTEU's participation in oral argument would assist the Court because the Union's extensive experience as the worksite representative of 140,000 federal employees enables it to impart practical information about the obstacles those employees face when they pursue anti-discrimination complaints.

4. Division of argument is particularly feasible in this case because while the two issues accepted for review are interrelated, they are analytically distinct. Petitioner and amicus propose to have NTEU take primary responsibility for presenting argument on the first issue--whether the 30-day time period is jurisdictional--and to have petitioner's counsel address the second question regarding the date the thirty-day period begins to run.

5. Finally, we note that this Court recently granted a similar motion for divided argument filed by NTEU. See Department of the Treasury v. Federal Labor Relations Authority, No. 88-2123 (decided April 17, 1990). In addition, NTEU counsel presented oral argument in National Treasury Employees Union v. Von Raab, 109 S.Ct. 1384 (1989) and in Bowsher v. Synar, 475 U.S. 1009 (1986).

On the basis of the foregoing, NTEU respectfully requests that its motion for divided argument be granted.

Respectfully submitted,

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May 1990

IN THE SUPREME COURT OF THE UNITED STATES
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SHIRLEY W. IRWIN, Petitioner	)	
v.	)	No. 89-5867
VETERANS ADMINISTRATION, et al., Respondent.	)	

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the Motion for Divided Argument by mail on May 7, 1990.

Jon R. Ker
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and hand delivered to:

Solicitor General
U.S. Department of Justice
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Gregory O'Duden
Director of Litigation

MAY 7, 1990